

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER, Service Agency

OAH No. 2023060374

PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on August 1, 2023.

Bridgette Webster, Attorney at Law, represented San Diego Regional Center (SDRC).

Wendy Dumlao, Attorney at Law, represented claimant, who was not present.

Oral and documentary evidence was received. The record was closed, and the matter submitted for decision on August 1, 2023.

ISSUE

Shall SDRC reimburse claimant's family for claimant's out-of-state placement costs, from March 7, 2023, to the present, which were not covered by the school district?

Shall SDRC fund claimant's ongoing out-of-state placement costs, which are not covered by the school district?

FACTUAL FINDINGS

Background

1. The following factual findings are derived from documentary evidence submitted by SDRC and claimant, and the testimony of claimant's father; Neil Kramer, Fair Hearings Manager at SDRC; Necol Shabazz, Program Manager (PM) at SDRC; Geoffrey Odelson, Service Coordinator (SC) at SDRC; Melissa Melgar, Coordinator of Behavior Services at SDRC; Evelyn Nguyen, SC at SDRC; and William Lacey, PM at SDRC.

2. Claimant is 16 years old and qualifies for regional center services based on his diagnoses of intellectual disability and autism spectrum disorder.

3. On or about March 20, 2023, claimant's father informed SDRC that claimant was in out-of-state placement at Oconomowoc Developmental Training Center, doing business as Genesee Lake School (Genesee Lake), in Wisconsin, and claimant's father indicated he would be asking for funding for claimant's out-of-state

placement. (Exhibits W and Z.) On May 12, 2023, claimant's father, through his counsel, requested funding for claimant's out-of-state placement. (Exhibit AA.)

4. On May 23, 2023, SDRC sent claimant a Notice of Action (NOA) indicating that claimant's request to fund out-of-state placement was denied and stated, "The decision to move [claimant] to an out of state placement was completed outside the scope of his Individual Program Plan's planning team. (Exhibit 4.) The school district is a generic resource who is responsible for funding [claimant's] services."

5. On June 8, 2023, claimant's counsel filed a fair hearing request on claimant's behalf and stated the following is needed to resolve the complaint: SDRC complete a comprehensive assessment to submit to the department for approval of out-of-state funding until an appropriate placement is found in state, pursuant to Welfare and Institutions Code section 4519; an order that SDRC will reimburse claimant's family for claimant's out-of-state placement at Genesee Lake, which is a vendor of SDRC and claimant's father provided notice of a request for reimbursement; and in the alternative, an order for SDRC to reimburse claimant's family for claimant's placement costs up to a deflection level. (Exhibit B.) The appeal further stated that the decision to place claimant out of state was not done outside of the "planning team" because claimant's father and claimant's SCs worked in collaboration to find claimant out-of-home placement (at local and in-state facilities), but placement could not be found. Claimant was denied deflection level of care "when things got really bad." Claimant's father placed claimant at an out-of-state facility due to "desperation" of which SDRC was aware of this desperation. The school district and SDRC are equally responsible for out-of-home placement, where the school district pays the educational portion. The appeal further stated:

SDRC is attempting to shuck its financial responsibility because it could not find an in-state placement. And to date, SDRC has not found an appropriate placement for [claimant]. Zero alternatives have been provided to the family. [Claimant's] IPP from 1/10/2022 documents when SDRC started its placement search. . . . [claimant's] family waited a year before they took placement into their own hands out of desperation. . . . Despite knowing out of state placement requires SDRC to complete a comprehensive assessment and submit a request to DDS for approval, they have yet to do this. . . . SDRC is responsible for [claimant] and his safety in his home and community, even when they are unable to find in-state placement. . . . They have done nothing for the family except provide [a] small amount of respite. . . . [claimant's] mother and sister had to move out of the family home, because of this. Because SDRC did not and cannot find a placement for [claimant], his parents had no choice but to place him out of state. His parents want him back in San Diego County as soon as an appropriate placement can be found for him.

6. This hearing followed.

Documents

7. A Triennial Evaluation – Multidisciplinary Psycho-Educational Report, dated March 12, 2020, was prepared by Graciela Sanchez, a school psychologist, Sue Spori, an educational specialist, and Hannah Martin, a speech-language pathologist,

on behalf of the San Dieguito Union High School District (SDUHSD). (Exhibit I.) Claimant was in seventh grade and he was 13 years old. He qualified for special education services under the categories of autism and speech language impairment. His other documented conditions were listed as specific learning disability, emotional disturbance, multiple disability, other health impairment, intellectual disability, deaf, deaf/blind, orthopedic impairment, traumatic brain injury, and visual impairment.

8. A "consumer placement referral" was included in the Triennial Evaluation for "24-hr. placement" and "respite." The reason listed for the placement/respite request was written as, "[Claimant's] behaviors have become too much for the family to manage and have taken a toll on the family. [Claimant's] father is now the sole caretaker of [claimant]." Up to this point, claimant had only resided in the family home. The request included "preferred living arrangements" of "home + placement" and "out-of-home respite."

9. A Behavioral Intervention Plan completed by North Coastal – Special Education Local Plan Area (SELPA) on March 12, 2020, indicated that claimant's "problem behavior" impeding his learning is, "Aggression . . . pulling hair, grabbing staff and squeezing, pinching staff, attempting to bite, throwing items/materials at staff and pushing staff. (Exhibit J.) Onset of aggression occurs when [claimant] makes contact with another person." The frequency of aggression occurred on average of 4.6 times a day, at a moderate level. The frequency of escape occurred on average of 0.62 times a day, at a mild level. The frequency of property destruction occurred on average of 0.13 times a day, at a moderate to severe level.

10. In a timeline prepared by SDRC, on November 23, 2021, a SC covering claimant's case, Kinshirley Nguyen, received a voice mail from claimant's father asking about services. She returned his call and claimant's father asked about "group homes

and other possible services” and he reported “that [claimant’s] behaviors has [*sic*] gotten worse and at this point dad not sure what to do.” (Exhibit 8.)

11. On December 7, 2021, a SC sent an email to claimant’s father to discuss “out of home placement” and “get more information for 159A.” (Exhibit 8.)

12. On January 10, 2022, Ms. Nguyen had taken over claimant’s case as his newly assigned SC, and she prepared an annual report. She noted that [claimant] continued to display the “same aggressive behaviors reported in the last annual review meeting.” (Exhibit 8.)

13. Claimant’s school attendance records at Carmel Valley Middle School for the school year 2020-2021 indicate he had excessive absences. (Exhibits N and O.)

14. Claimant’s school attendance records at ACES Academy shows the “number of days in attendance” for each of the following months: April 2021 – 5 days (started April 26, 2021); May 2021 – 20 days; June 2021 – 9 days; July 2021 – 16 days; August 2021 – 14 days; September 2021 – 12 days; October 2021 – 20 days; November 2021 – 18 days; December 2021 – 12 days; January 2022 – 20 days; February 2022 – 13 days; March 2022 – 19 days; April 2022 – 20 days; May 2022 – 21 days; June 2022 – 4 days; July 2022 – 12 days; August 2022 – 2 days; September 2022 – 1 day; and October 2022 – 0 days. (Exhibit P.)

15. In an email correspondence between claimant’s father and ACES Academy on August 1, 2022, claimant’s father reported that claimant missed school because “he has been resisting and does not want to go.” (Exhibit Q.) ACES Academy terminated claimant on October 18, 2022. (Exhibit T.)

16. A summary sheet for an IPP meeting on January 10, 2022, was completed by Ms. Nguyen, claimant's SC, and reported that Ms. Nguyen met with claimant's father and the "team completed a placement referral form." (Exhibit K.)

17. An IPP Addendum, dated January 26, 2022, indicates that claimant received regional center funded services, including in-home respite services that were approved through June 30, 2022. (Exhibit H.) Claimant was residing at home with his family and attending public school at Carmel Valley Middle School. The IPP noted some outcomes changed including claimant will demonstrate effective coping strategies when angry, frustrated or upset, and claimant will decrease maladaptive behaviors.

18. An Individualized Education Program (IEP), dated May 24, 2022, indicated that claimant was 15 years old and in ninth grade at Carmel Valley Middle School at SDUHSD. (Exhibit L.) The IEP reported that claimant "emits maladaptive behaviors in the form of aggression, property destruction and escape." Severe incidents have included "repeated grabs, pulling hair, pinching, and property destruction, running into the street and businesses to avoid walking past dogs."

19. On September 7, 2022, Ms. Nguyen, claimant's SC, emailed to claimant's father the following timeline of SDRC's efforts to find placement (local and/or in-state) for claimant, from January 2022 through September 2022: (Exhibit S.)

January 2022: Client placement form completed to begin placement search.

February 2022: Kids Pacific was interested – conducted intake and ultimately was not chosen for home. Referred to TMI FFA homes. 1st round of state-wide search sent.

March 2022: 1st TMI home – visited and denied.

April 2022: 2nd TMI home – visited and denied.

May 2022: SC Evelyn Nguyen reached back out to Rebekah M. about a home in East County – HGH Pierce home a deflection home. TMI has possible home in Fallbrook – met and denied. Alta RC and Valley Mountain RC peaked interest in [claimant's] referral, however VMRC has a waitlist of 6-12 months and Alta requested for [claimant's] IPP in order to present case, in which SC sent; SC followed up a few times and never heard back. [Claimant] had a 2 hours visit to the Fallbrook home.

June 2022: [Claimant] had a scheduled overnight visit in Fallbrook home. TMI Fallbrook home decided not to move forward. [Claimant's] placement referral was circulated again to all placement units and resubmitted for review with the Placement Review Team. TMI Krystal Castro Home did not go through, Gabriela said maybe something for end of July. SC received response from Tracy Fairchild, CPP Placement Coordinator at Tri-Counties Regional Center who advised that based on the frequency and intensity of [claimant's] challenging behaviors the Nipomo Home would not be appropriate as the Nipomo Home is a level 4B home and [claimant] would require a higher level home.

August 2022: SC received a lead regarding an opening at Zen House – home Liaison sent placement referral form to home administrator.

September 2022: [Claimant's] case to be transferred to new SC in Transition Age Youth Unit, unit 38.

20. SDRC's timeline reports that on March 1, 2022, claimant's father was "updated on out of state placement." (Exhibit 8.) Claimant's father asked about foster homes. Several other notes in SDRC's timeline, similar to Ms. Nguyen's separate timeline above, report about SDRC's inquiries for placement for claimant at local facilities and other facilities throughout the state. Claimant's father also inquired about placement in San Bernardino County and Orange County.

21. An SDRC record, undated, indicated the "reason for needed placement" as follows: "[Claimant] has become increasing aggressive towards family and this has created an unsafe home environment. Mother and younger sibling have moved out of the home for safety reasons." (Exhibit 9.) The record notes claimant's 159A form that is used for referrals for potential placement vendors was circulated to placement teams on January 12, 2022, February 1, 2022, February 17, 2022, May 2, 2022, May 4, 2022, and June 27, 2022. Claimant's case was presented to the Placement Review Team (PRT) on May 11, 2022, and June 15, 2022, during which times PRT recommended claimant's placement be at level 4I, and not deflection.

22. SDRC's timeline reports that on June 21, 2022, claimant's father "inquired about giving up rights and dropping [claimant] off at Polinsky." (Exhibit 8.)

23. In an email on October 24, 2022, Mr. Odelson, claimant's newly assigned SC, introduced himself to claimant's father. (Exhibit U.)

24. In an email on November 14, 2022, Mr. Odelson asked claimant's father if he prefers placement for claimant to be a "group home situation rather than a single home/foster family situation." (Exhibit V.)

25. In email exchanges in March 2023, claimant's father informed Mr. Odelson that claimant was placed at Genesee Lake - an out-of-state placement; claimant's father informed Mr. Odelson that he would be asking for funding from SDRC for claimant's out-of-state placement at Genesee Lake; Mr. Lacey confirmed that SDRC had releases of information (ROI) from claimant's father in order for SDRC to obtain records; a meeting was scheduled in April 2023; and Mr. Lacey wrote that he was working on a timeline of SDRC's efforts to find placement for claimant. (Exhibit W.)

26. In an email on March 12, 2023, claimant's counsel provided a timeline of efforts to find placement for claimant and a formal request for funding for claimant's out-of-state placement at Genesee Lake. (Exhibit AA.) Claimant's counsel sent an email on March 26, 2023, to Mr. Odelson and Mr. Lacey, among others, to follow-up on the request for funding. In a reply email on June 1, 2023, Mr. Lacey informed claimant's counsel that a NOA [denying the request for funding] had been sent to claimant's father on May 24, 2023. (Exhibit AA.)

27. A Semi-Annual Plan prepared by Genesee Lake on June 21, 2023, indicated that claimant was admitted on December 21, 2022. He struggles with "completing activities of daily living independently and periodic emotional outbursts and aggressions." (Exhibit M.) The plan reported that claimant "typically communicates feelings of anger or frustration through nonverbal means, including . . . aggressions (grabbing and pulling on staff)." Of note, the plan stated that claimant shakes and persistently grabs staff including their clothing such as collars, whereby staff should utilize releases to get out of claimant's grip or utilize Ukeru training to remain safe.

28. In an email to Mr. Odelson on July 24, 2023, claimant's father again requested funding for claimant's out-of-state placement at Genesee Lake, and asked about SDRC completing the assessment needed for out-of-state placement, the status of any referrals for local and/or in-state referrals for claimant since claimant's father had been asking for placement since 2020, and an update on any new referrals for local and/or in-state placement for claimant. (Exhibit BB.)

Testimony

29. Neil Kramer, Fair Hearing Manager at SDRC, testified at the hearing. The following is a summary of Mr. Kramer's testimony: He has worked at SDRC since 2008. He has been the Fair Hearing Manager since 2011. He is familiar with claimant's case. SDRC conducted local and in-state search for placement. PRT was also consulted, and a request for deflection level care was denied because SDRC felt there may have been 4I placements available. During the search for placement, there was a transition from Ms. Shabazz's unit to Mr. Lacey's unit. There are about 50 units at SDRC. Claimant's family informed SDRC in March 2023 that claimant was placed out-of-state. The family requested funding for this placement. The request was denied because SDRC has to follow the process outlined in Welfare and Institutions Code section 4519, where SDRC must first explore local and in-state options, if that search comes up short then an assessment is conducted and the Department of Developmental Services (DDS) gets involved. SDRC has to justify to DDS that a search by DDS needs to be conducted, and DDS has its own way of conducting a placement search with its own resources. After this process is exhausted, then DDS will consider funding out-of-state placement for six months while the search continues for in-state placement.

30. Mr. Kramer testified that SDRC was not aware that claimant's family was interested in out-of-state placement. An 159A form had been completed for claimant's

search for in-state placement. It contains a snapshot of the claimant's needs, age, health care, and behavioral issues – it is not an assessment but a list of claimant's needs in order for a group home to determine if they can or cannot serve the claimant.

31. Mr. Kramer understands that claimant's family was seeking due process through claimant's school district, and a settlement was reached where the school district agreed to render partial payment for out-of-state placement. However, SDRC has not received any documentation of the settlement and does not know how much SDRC would pay versus the school district.

32. Mr. Kramer testified that SDRC needs to start from scratch and search again both locally and in-state for placement for claimant at level 4I facilities and then conduct a search at a deflection level if claimant is in need of that level of care. SDRC needs to update claimant's 159A form. If the local and in-state searches are not successful, then SDRC needs to conduct an assessment of claimant and reach out to DDS for an out-of-state search. It can be challenging to obtain approval for out-of-state placement.

33. On cross-examination, Mr. Kramer testified that out-of-state searches begin when the family asks for one to be done. The claimant's SC will bring up the "options" to the family. He described the local and in-state searches for claimant's placement as taking "a long time."

34. Necol Shabazz, PM at SDRC, testified at the hearing. The following is a summary of Ms. Shabazz's testimony: She has worked at SDRC since 2006. She first worked as a SC and became a PM in 2017. She is a PM in the placement unit. The placement search for claimant began in January 2022 when Ms. Nguyen was claimant's SC. It is a process that takes some time. First, a 159A form is completed for placement

referral for level 4I care. The referral is sent to the placement teams to search for vendors that have open beds and can potentially accept new clients. At some point, the potential provider is given more documentation – called a “collateral package” – that includes behavioral reports and psychological evaluations. It could be months before there is a provider that expresses interest.

35. Ms. Shabazz testified that in claimant’s case, there were residential level 4I providers who got to the stage of reviewing claimant’s collateral package, however the provider denied placement. These providers were Kids First Vista Pacifica who denied placement because of claimant’s peanut allergy; Towards Maximum Independence (TMI) a Foster Family Home (FFH) who denied placement because of claimant’s peanut allergy; TMI FFH Kimberli Baeza who denied placement because of claimant’s fear of a cat in the home; Alta Regional Center who had no availability; Valley Mountain Regional Center (VMRC) who could not provide placement at Kavere Crisis Home because there was a 6 to 12-month wait list; TMI FFH Krystal Castro Home who denied placement because claimant was not a good fit; and other vendors who denied placement including Guillen Small Family Home (SFH), Tri Counties Regional Center at a lower-level 4B care facility, and Zen House.

36. Ms. Shabazz reported that Ms. Nguyen did a “lot of work looking for referrals” but there were no placements found by Ms. Nguyen in 2022. Ms. Nguyen consulted with PRT for help to find level 4I homes locally and in-state. PRT denied the request for deflection status/placement because it felt there were still level 4I placements to look into.

37. Geoffrey Odelson, SC at SDRC, testified at the hearing. The following is a summary of Mr. Odelson’s testimony: He is a SC and he began working at SDRC at the end of September 2022. He took over claimant’s case from Ms. Nguyen in October

2022. At that time, claimant was residing with claimant's father. In March 2023, claimant's father informed him that the family placed claimant at an out-of-state facility – Genesee Lake – in Wisconsin. A case note on October 24, 2022, indicates that he and claimant's father spoke about a local or in-state TMI FFH placement in September 2022, and claimant was put on a wait list for that type of placement. (Exhibit 22.) In January 2023, he asked claimant's father about scheduling an IPP meeting, and claimant's father asked to conduct the meeting by Zoom and March 2023 would be best. He was not aware that claimant's father was considering out-of-state placement for claimant. He received claimant's father's request for out-of-state placement and understands this request was denied because the "family went out of the request boundaries" and the "regulations are very strict with the process." He explained that the out-of-state placement of claimant took place without SDRC's knowledge and the steps to do so were circumvented.

38. On cross-examination, Mr. Odelson indicated that no placements materialized from March 2023 through the present. He understood that claimant's father signed ROIs for Genesee Lake and the school district to release records to SDRC, but SDRC had not received records from Genesee Lake. He was not aware of claimant's behavioral assessment, although he was aware of claimant's IEP. SDRC needed a full scope of records to conduct an updated assessment to determine claimant's proper placement. He did not ask claimant's father for the records that were needed.

39. Melissa Melgar, Coordinator of Behavior Services at SDRC, testified at the hearing. The following is a summary of Ms. Melgar's testimony: She has worked at SDRC for six years. She is familiar with claimant because she was a part of PRT when it reviewed claimant's placement requests. PRT reviewed claimant's case in May 2022 and June 2022. A PRT case note in May 2022 indicated that Ms. Nguyen came to the

team to see if the level 4I care was correct. (Exhibit 22.) It did not appear that claimant had exhausted all resources, so PRT decided to keep him at level 4I care. PRT asked Ms. Nguyen to re-send the state-wide search. PRT saw that claimant had no hospitalizations, and he was denied placement because of a peanut allergy and fear of a cat, so it determined to continue a search for a 4I level placement. PRT recommended that claimant's father seek applied behavioral analysis (ABA) services through his health insurance. In June 2022, Ms. Nguyen asked PRT to again review claimant's case. There were no new behaviors noted for claimant, so level 4I care was still considered the least restrictive environment at that time. PRT learned claimant's father was not interested in ABA services. PRT was not asked to review claimant's case again.

40. Ms. Melgar testified that in order for SDRC to fund out-of-state placement SDRC would need to search for local and in-state placements and then refer the case to DDS. Claimant was found to need level 4I care, which includes self-injurious behavior. Deflection level of care usually is needed when there have been hospitalizations. There is also a possibility of searching for "STAR bed" placements, which is an extreme crisis level of care, and other placement levels like "dual homes" and enhanced behavioral support homes. Only after all of these options have been exhausted, would SDRC then reach out to DDS for out-of-state placement.

41. On cross-examination, Ms. Melgar was asked if she was aware that SDRC's case note on May 11, 2022, reported that claimant's mother and sibling moved out of the family home due to claimant's behaviors. She did not consider this to be a crisis because she was not aware of any hospitalizations or emergencies. Ms. Melgar was asked if she was aware of SDRC's case note on May 12, 2022, that indicated claimant's father reported claimant underwent a psychological evaluation in 2020,

claimant's father reported claimant underwent ABA treatment for six years and was no longer interested, and claimant's father reported he was at his "wits end" and is focusing on claimant being placed.

42. Bill "William" Lacey, PM at SDRC, testified at the hearing. The following is a summary of Mr. Lacey's testimony: He is a Program Manager for Unit 23 – Transition Age Youth (TAY). He is Mr. Odelson's supervisor. Since 2022, Mr. Odelson has not taken claimant's case back to PRT for placement review or ask for deflection status. SDRC was waiting to see the outcome of the hearing. There was a meeting with the family in April 2023 for claimant's IPP, but the IPP is incomplete because the family has not signed a copy of the IPP. After the April 2023 meeting or correspondence with claimant's counsel, he reached out to his supervisors regarding out-of-state placement for claimant, and per his supervisor, Kathy Catell, the NOA was issued to claimant.

43. Evelyn Nguyen, SC at SDRC, testified at the hearing. The following is a summary of Ms. Nguyen's testimony: She started as claimant's SC in January 2022. Claimant's father shared with her that the family was looking for out-of-home placement. She completed quite a few placement referrals with 159A forms. She sent the referrals to her manager, Ms. Shabazz, for approval, and if she were to need a higher level of referral, she would get approval from a placement manager such as Sharon Myer. The referrals were sent to all vendors in the county.

44. Ms. Nguyen testified that she circulated claimant's placement search in the county from January 2022 through September 2022. There was availability at Kids First Pacifica in Vista, and other facilities. Claimant's father did everything she asked of him to have claimant meet the placement vendor each time. For different reasons, claimant's placement was denied by the vendors, such as he has a severe peanut allergy that requires an Epi Pen. She also conducted two state-wide searches that

resulted in inquiries from Alta Regional Center and Valley Mountain Regional Center, but neither could accept claimant. There was a deflection home in the county that was interested in claimant in the spring of 2022, but PRT declined to approve her request for claimant needing deflection-level of care. That decision was above her. PRT made suggestions that she took back to claimant's father. She conducted another statewide search after that. She reached out to the TMI FFH homes. (Exhibit 3.) Claimant and claimant's father attended "meet and greets" at the potential TMI FFH homes, but claimant was severely afraid of a cat in one home, one home had young children so the home declined placement, and two other homes did not pan out. Claimant's father considered all of the vendors that she referred to him. In June 2022, she also looked into in-home respite and behavioral respite in action (BRIA) for claimant. She made a respite referral for Comfort Care.

45. Ms. Nguyen testified she recalled claimant's father telling her that he was at his "wits end" and he was going to drop-off claimant at Polinsky. She appeared almost teary-eyed at the hearing. She testified that she reminded claimant's father of claimant's right to a hearing. She did not advise claimant's father of the out-of-state placement process or the state-wide specialized resource service (SSRS) unit. She did not know about SSRS. Claimant's case was administratively transferred to another SC in September 2022.

46. Claimant's father testified at the hearing and the following is a summary of his testimony. Claimant was 15 years old when he was placed at Genesee Lake on December 21, 2022. Claimant is now 16 years old. Genesee Lake is a residential treatment facility in Wisconsin that has a residential component and an educational component. SDUHSD is paying a portion of the cost of Genesee Lake. The total annual cost for Genesee for the 2023 calendar year is \$280,320, which is about \$6,000 to

\$7,000 less each month than other options. SDUHSD agreed in its settlement to fund its portion of costs for Genesee Lake until August 2025. The annual amount not funded by SDUHSD is \$160,320, which is what SDRC could fund. He was told that Genesee Lake has a "purchase order" with Alta Regional Center. Claimant is now attending school at Genesee Lake, which was a problem before claimant was placed there. Claimant's behaviors are now being managed. Claimant started at the "main campus" at Genesee Lake, which claimant's father described as "almost like a secure facility." Claimant has since transitioned to residing in a group home at Genesee Lake that has children in claimant's same age group, and claimant leaves to go to school from where claimant resides.

47. Claimant's father testified that before Genesee Lake, claimant had an inconsistent sleep schedule, engaged in property destruction, physical aggression, and elopement. There were incidents where claimant broke plates, glass, and pots in the family home, including when he threw and broke a glass-microwave tray. Claimant also broke several computers and tablets. Claimant's father lost count as to how many electronic devices that claimant broke. He is sure that he reported these behaviors to claimant's SCs starting with "Chelsea" in 2020. Claimant also engaged in squeezing, pinching, and fighting. Claimant would fight with him and could not be stopped for 30 or more minutes. When claimant was attending ACES Academy (non-public school) in downtown San Diego, it was about a 20 minute drive, and claimant would pull the hair of the driver or pull back the shirt of the driver and effectively strangling the driver with the driver's shirt. The driver had to pull over and call for assistance. This happened to him, as well, while he was driving claimant. There was also an incident when claimant eloped in 2021 and he was found inside a home that was four houses down from the family home. Claimant's sister is 14 years old and she moved out of the

family home in fall 2021 because of claimant's behaviors as "it was hard for her." He became claimant's only caretaker.

48. Claimant's father testified that when SDUHSD agreed for claimant to attend a non-public school – ACES Academy – in March 2021, it was because claimant's behaviors could no longer be supported in a traditional school environment because claimant had incidents of aggression towards the staff at the traditional school. There were incidents at ACES Academy when claimant eloped and when he consumed a Reese's peanut butter cup and had to be brought to the emergency room. Sometime in July or September 2022, claimant just stopped going to school. He gave claimant's school attendance records to SDRC, so SDRC can understand some of what has led to claimant's placement at Genesee Lake. When he would try to get claimant to go to school, claimant would become aggressive toward him and claimant needed more than one hour to calm down. Claimant was expelled from ACES Academy for his lack of attendance. SDUHSD started looking for another non-public school for claimant. Eventually, he discovered Genesee Lake on his own.

49. Claimant's father testified that claimant's Behavioral Intervention Plan by North Coastal SELPA, dated December 16, 2021, outlined claimant's history of aggression episodes such as pulling hair, grabbing and squeezing staff, pinching, attempting to bite, throwing items/materials at staff, and pushing staff. (Exhibit 10).

50. Claimant's father testified that claimant had emergency room visits in late 2020 to mid-2022 due to different incidents. In one incident, claimant threw a glass table top and walked over the broken glass because claimant had no situational awareness. The emergency room was aware of claimant's extreme behaviors, but told him that there was not anything that he could do.

51. Claimant's father did not know there was such a thing as out-of-home respite because he was never told about it. The last time he accessed in-home respite was towards the end of 2020 because it was difficult to set the hours, and even then he might not have needed the hours at the time they were scheduled.

52. Claimant's father recalled that claimant underwent a psychological assessment in late 2020. Claimant took some prescribed medications for his behaviors in 2022, but claimant had a reaction and his doctor agreed for him to stop the medications. Claimant received ABA services for some time, but when his therapist was no longer available, claimant's father had difficulty finding another therapist through his insurance.

53. Concerning the search for local and in-state placements, claimant's father testified that he looked into all of the placement options that Ms. Nguyen sent to him. It took him a while to learn about the option of out-of-home placement through either his former SC, Chelsea, or Ms. Nguyen. He does not believe that SDRC has searched for any local or in-state placements for claimant since late summer 2022, which was when Ms. Nguyen gave him referrals and arranged meet and greets at TMI FFH facilities.

54. Concerning out-of-state placement, claimant's father testified that it was a special education attorney who told him there could be funding by SDRC for out-of-state placement and referred him to his counsel for this matter. Had SDRC told him about this option, he would have followed the required process. As to why he placed claimant out-of-state at Genesee Lake, he testified:

There was no end in sight. The only thing I knew was that [claimant] was denied for deflection and to wait and see if anything [4I] opened up. So, I started looking on my own.

55. Claimant's father testified that he did not recall Mr. Odelson emailing him an IPP for his signature. He recalled signing ROIs for Genesee Lake and SDUHSD. He also recalled asking Genesee Lake if SDRC had requested any records, and Genesee Lake informed him it had not received any request from SDRC. Mr. Odelson never asked him for records from Genesee Lake, if Mr. Odelson had asked, he would have given them to Mr. Odelson. He recalled notifying Ms. Nguyen that he was able to get a copy of claimant's behavioral report, dated December 16, 2021, and he was able to get claimant's triennial assessment or IEP that were done at the same time. (Exhibits 9 and 10.) He did not recall if he provided copies of these assessments to SDRC.

56. Claimant's father stated:

There was a process of discovery . . . I've never really known what's been available. . . . The process got way more extended because it was just me trying to figure out through multiple resources as to what was out there. If I'd known what to request, I would have requested them [sic] years ago – it just took a long time to find out.

57. Claimant's father testified that he would be happy to return claimant to California for local or in-state placement. He is willing to attend meet and greets, via Zoom, for potential placements. The first meet and greet that he and claimant attended was on Zoom for Kids First Vista Pacifica. He is hoping that any evaluations

can be done virtually. In the meantime, he is requesting that SDRC fund its portion of claimant's out-of-state placement at Genesee Lake.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that a regional center should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.) Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

3. DDS is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the developmentally disabled with "access to the services and supports best suited to them throughout their lifetime." (Welf. & Inst. Code, § 4620.)

4. A regional center's responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

5. Welfare and Institutions Code section 4512, subdivision (b), defines "services and supports" as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of

each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

6. Welfare and Institutions Code section 4512, subdivision (j), states:

“Planning team” means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, and including a minor’s, dependent’s, or ward’s court-appointed developmental services decisionmaker appointed pursuant to Section 319, 361, or 726.

7. Welfare and Institutions Code section 4519 provides:

(a) The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the consumer's individual program plan developed pursuant to Sections 4646 to 4648, inclusive. Prior to submitting a request for out-of-state services, the regional center shall conduct a comprehensive assessment and convene an individual program plan meeting to determine the services and supports needed for the consumer to receive services in California and shall request assistance from the department's statewide specialized resource service in identifying options to serve the consumer in California. The request shall include details regarding all options considered and an explanation of why these options cannot meet the consumer's needs. The department shall authorize for no more than six months the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state. Any extension beyond six months shall be based on a new and complete comprehensive assessment of the consumer's needs, review of available options, and determination that the consumer's needs cannot be met in California. An extension shall not exceed six months. For the purposes of this section,

the department shall be considered a service agency under Chapter 7 (commencing with Section 4700).

(b) Funds shall not be expended for the cost of interstate travel or transportation by regional center staff in connection with the purchase of any service outside the state unless authorized by the director or the director's designee.

(c) If a regional center places a consumer out of state pursuant to subdivision (a), it shall prepare a report for inclusion in the consumer's individual program plan. This report shall summarize the regional center's efforts to locate, develop, or adapt an appropriate program for the consumer within the state. This report shall be reviewed and updated every three months, and a copy shall be sent to the director. Each comprehensive assessment and report shall include identification of the services and supports needed and the timeline for identifying or developing those services needed to transition the consumer back to California.

(d) Notwithstanding subdivisions (a), (b), and (c), the State Department of Developmental Services or a regional center may expend funds allocated to it for the purchase of services for residents of this state and administrative costs incurred in providing services in the border areas of a state

adjacent to California when the purchase is approved by the regional center director.

(e) Each regional center shall submit to the department by December 31, 2012, a transition plan for all consumers residing out of state as of June 30, 2012, for whom the regional center is purchasing services.

(f) This section shall become operative January 1, 2022.

8. Regional center funds shall not be used to supplant the budget of an agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing these services. (Welf. & Inst. Code, § 4648, subd. (a)(8).)

9. The regional center must consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

10. Welfare and Institutions Code section 4659, subdivisions (a) and (c), require that regional centers shall pursue all possible resources of funding for clients, describes school districts as a source of funding for regional center clients, and prohibits regional centers from purchasing services available from generic resources.

Evaluation

11. The law lays out a process to be followed for a regional center to fund out-of-state placement at a facility such as Genesee Lake. While the importance of following the process cannot be understated, a close look at the evidence in this case

establishes that claimant is in need of out-of-home placement whether it be local, in-state and/or out-of-state.

12. Claimant is a 16-year old boy whose disabilities include intellectual disability and autism. He has been a client of SDRC since he was about five years old, although he did not access many services of SDRC for some years. He was able to reside in his family home with his father, mother, and sister, and attend school in his school district. Claimant appears to have been relatively stable in his residential and school settings until a few years ago, when his behaviors became troublesome due to aggression at school and at home.

13. In about 2021, claimant's aggression increased and he had several incidents that were concerning. Claimant would suddenly pull the hair and shirt of the school driver while the driver was driving, and pull his father's hair and shirt when his father was driving, which would cause the driver to be nearly strangled and have to pull over for assistance. The school district moved claimant to a non-public school because his traditional school was no longer able to manage his behaviors, but claimant struggled with attendance and refused to go to school in about June 2022. At home, claimant's inability to manage his behavior increased and he destroyed several computers and electronic tablets by throwing them. Claimant also routinely launched dishes and anything that he could get his hands on when he became angry. Claimant's father testified that these episodes lasted anywhere from 30 minutes to more than 1 hour. In one incident, claimant removed a glass tabletop and threw it, which caused glass to shatter everywhere. Claimant walked on the shattered glass and injured himself, and his father had to bring him to the emergency room. The situation escalated at home to the point where claimant's mother and sister moved out of the

family home because it was no longer safe for them. Claimant's father has been claimant's sole caretaker since.

14. From the evidence, it appears claimant's father first asked about group homes for claimant in November 2021, when claimant's SC was Chelsea. Claimant's father began working with claimant's SC, Ms. Nguyen, in January 2022 for help with the increasingly unmanageable situation at home. Ms. Nguyen searched for out-of-home placement options. The testimony and record reflects that from January 2022 to September 2022, Ms. Nguyen made ongoing efforts to find a local and/or in-state placement for claimant. She sent referrals to vendors who had availability by sending them a 159A form and a collateral packet for review. Unfortunately, none of these vendors accepted claimant for placement. The reasons for non-placement did not include claimant's behavioral problems, but were because of claimant's severe peanut allergy, his fear of a cat in a home, he was not a good fit because a vendor had small children in the home, there was a wait list, and/or because the level of care was not 4I and was deflection or 4B. Claimant's father was fully compliant with bringing claimant to meet and greet at the prospective facilities.

15. During this period from January 2022 to September 2022, claimant's father had ongoing contact with Ms. Nguyen and expressed that he was at his "wits end" and wanted to drop-off claimant at Polinsky. The documentation shows that claimant's father was very much struggling to keep claimant at home. Claimant's father also reported that claimant's mother and sister moved out of the family home due to claimant's aggressive behavior. The desperation of claimant's father to find placement for claimant is well-documented in SDRC's case notes. Ms. Nguyen was very responsive and continued the search for local and/or in-state placement. She reached out to local vendors and to other regional centers in the state – none of which worked

out. She also made a request to PRT to modify claimant's level of care from 4I to deflection, which is a higher level of care because there was a possible placement for claimant at a local deflection facility. PRT, which included Ms. Melgar, denied Ms. Nguyen's request for deflection primarily because PRT determined that claimant did not exhibit signs of aggression towards others. However, it does not appear that PRT was aware of claimant's incidents of pulling the hair and shirts of drivers while they were driving, nor his dangerous throwing and shattering a glass tabletop where he required medical care at an emergency room, attending a non-public school setting because - among other issues - of his aggression towards staff at a traditional school, refusing to attend his non-public school and fighting with his father about this, and that claimant's mother and sister moved out of the family home for their safety. Up to this point, it does not appear that SDRC reached out to DDS or the SSRS unit for assistance with its efforts to find local and/or in-state placement for claimant. Unfortunately, placement never materialized for claimant while Ms. Nguyen was his SC despite her efforts.

16. Claimant's case was transferred from Ms. Nguyen to a new SC, Mr. Odelson, in October 2022. At the time, Mr. Odelson was a new employee at SDRC. Mr. Odelson attempted to communicate with claimant's father by introducing himself and a few months later, asking if claimant's father was looking for a group home or another type of placement, and arranging for an IPP meeting that did not happen until April 2023. There seems to have been not much more that happened. The case notes reflect limited email correspondence between Mr. Odelson and claimant's father, such that their communication and the efforts by SDRC to continue its search for placement seems to have stopped. Claimant's father testified that after Ms. Nguyen transferred claimant's case, he was not aware of any additional efforts by SDRC to find placement

locally and/or in-state. At a Zoom IPP meeting in April 2023, claimant's father informed Mr. Odelson of claimant's out-of-state placement at Genesee Lake.

17. Claimant's father testified that it was not until he hired counsel for a lawsuit against the school district that he learned that regional centers could fund out-of-state placements. He settled his case against the school district who agreed to fund the educational portion of claimant's out-of-state placement at Genesee Lake through August 2025. Claimant's father testified that up until his conversations with his counsel for the school district case and with Ms. Dumlao, he had never been informed by anyone at SDRC about the possibility of out-of-state placement. He testified that had he known about this option, he would have requested an out-of-state placement search and assessment because SDRC's efforts to secure local and/or in-state placement had not materialized since January 2022 – let alone since his initial request for a group home in November 2021. Claimant's father discovered Genesee Lake on his own after he had searched but was not able to find a local and/or in-state placement for claimant. He testified that to this day, no one at SDRC has reached out to him since September 2022 about SDRC's efforts to place claimant at a local and/or in-state facility. Mr. Odelson did testify that since about October 2022, claimant's father did not reach out to him about continuing to seek placement for claimant. However, Mr. Odelson also stated he had not searched or sent a referral for placement for claimant since approximately October 2022. The record is not fully clear, but it may be that no referrals for out-of-home placement have been sent by SDRC since August 2022.

18. SDRC argues that the proper protocol as outlined in the law was not followed as far as out-of-state placement for claimant. SDRC argues that it is supposed to work with the family as a team in making decisions, a comprehensive assessment

was required, and SDRC must exhaust all efforts to locate in-state and/or local placement before seeking out-of-state placement. SDRC argues that since the law was not followed and claimant was placed out of state without the involvement of SDRC, that SDRC is prohibited from reimbursing and/or paying for claimant's out-of-state placement.

19. The concern with the argument of SDRC is that – at what point are the efforts “exhausted,” such that a long amount of time elapses and no local and/or in-state placement has been secured. In addition, efforts will never be “exhausted” if SDRC essentially ceases its diligent search efforts for such placement. Claimant's father became exhausted himself with the local and in-state placement search that went on for more than one year, and his exhaustion is reasonable considering he first inquired about group home placement in November 2021. Undoubtedly, securing local and/or in-state placement is not an easy task. But, there is a difference between ongoing and diligent efforts, and sporadic and fizzled-out efforts that lack continuity, communication, and proper assessment of placement at a 4I or deflection facility based on claimant's well-documented aggression towards others at school, in cars, and at home. SDRC appears to have stopped searching for placement in approximately September 2022, and mostly stopped communicating with claimant's father about its efforts – or ceasing of its efforts - to locate placement. Moreover, despite claimant's father's pleas for placement and his growing concerns about claimant's aggression towards others, the urgency of the situation was not realized by SDRC because it seems PRT was not fully apprised of the case notes that documented claimant's increase in aggression to the point where claimant's mother and sister moved out of the family home, claimant was attacking people as they drove him in a car, and claimant refused to attend school. The optics are such that SDRC's efforts to find placement for claimant fizzled out, and SDRC never contacted DDS or the SSRS unit

for assistance when it was not able to locate a local and/or in-state placement for claimant.

20. The optics are also such that claimant's family was left to figure things out on its own. SDRC did not have a discussion with claimant's father about the possibility of out-of-state placement when there seemed to be no available local and/or in-state placement options. Where the struggle comes into play is that while claimant's father did not involve SDRC in claimant's out-of-state placement, claimant's father was, for the most part, no longer being contacted by a SC or anyone else about placement options. There was no indication that a more detailed assessment or an updated 159A form were needed or being arranged, which may have provided a more accurate picture of claimant's placement needs and allowed for a more refined search regarding options and the availability of such local, in-state, and/or out-of-state placements. There is also no indication that the SSRS unit was contacted for assistance in claimant's search for local and/or in-state placement.

21. In consideration of all of the above, the appropriate resolution in this matter is to immediately conduct a comprehensive assessment of claimant for out-of-state placement; to reimburse the family for costs not covered by the school district for claimant's placement at Genesee Lake from March 7, 2023, to September 7, 2023 – not to exceed a total of six months; to fund ongoing costs not covered by the school district for claimant's placement at Genesee Lake from September 8, 2023, and to no later than March 8, 2024 – not to exceed a total of six months; to order SDRC to resume its search for a local and/or in-state placement with a goal for claimant to return to California with secured placement at an appropriate facility in California, and to work with claimant's family as a team in this process; and to contact the SSRS unit for assistance, and to prepare a report for inclusion in claimant's IPP.

ORDER

Claimant's appeal from San Diego Regional Center's determination that it will not fund out-of-state placement, is granted, as follows:

1. San Diego Regional Center shall conduct a comprehensive assessment of claimant for out-of-state placement.

2. San Diego Regional Center shall reimburse claimant's family for costs not covered by the school district for claimant's out-of-state placement at Genesee Lake from March 7, 2023, to September 7, 2023 – not to exceed a total of six months.

3. San Diego Regional Center shall fund ongoing costs not covered by the school district for claimant's out-of-state placement at Genesee Lake from September 8, 2023, and to no later than March 8, 2024 – not to exceed a total of six months.

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4. San Diego Regional Center shall resume its search for local and/or in-state placement for claimant with a goal for claimant to return to California with placement at an appropriate-level of care facility in California, and work with claimant's family as a team in this process; San Diego Regional Center shall request assistance from the department's state-wide specialized resource service unit in identifying options to serve claimant in California; and San Diego Regional Center shall prepare a report for inclusion in claimant's IPP that will summarize San Diego Regional Center's efforts to locate, develop, or adapt an appropriate program for claimant within the state, of which the report will be updated every three months, and provide a copy of the report to the director.

DATE: August 11, 2023

JAMI A. TEAGLE-BURGOS
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Matter of:

Claimant

OAH Case No. 2023060374

Vs.

DECISION BY THE DIRECTOR

San Diego Regional Center,

Respondent.

ORDER OF DECISION

On August 11, 2023, an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH) issued a Proposed Decision in this matter.

The Department of Developmental Services (DDS) takes the following action on the attached Proposed Decision of the ALJ:

Given the exceptional circumstances of the case, the Proposed Decision is expressly adopted by DDS as its Decision in this matter. The Order of Decision, together with the Proposed Decision, constitute the Decision in this matter.

This is the final administrative Decision. Each party is bound by this Decision. Either party may request a reconsideration pursuant to Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the Decision or appeal the Decision to a court of competent jurisdiction within 180 days of receiving the final Decision.

Attached is a fact sheet with information about what to do and expect after you receive this decision, and where to get help.

IT IS SO ORDERED on this day: _____

Nancy Bargmann, Director